Sistem Televisyen Malaysia Bhd & Ors v Nurullah bt Zawawi & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(W)-2807–12 OF 2013
ZAHARAH IBRAHIM, AZAHAR MOHAMED AND MOHAMAD ARIFF JJCA
28 SEPTEMBER 2015

Tort — Defamation — Libel — Publication of defamatory words in television programme — Whether words were defamatory of respondents — Whether High Court judge erred in finding appellants liable — Damages — Assessment of — Whether there was basis for awarding exemplary damages — Whether programme was scheme calculated to make profit for appellants — Whether there was basis for awarding aggravated damages — Whether there was evidence of any deliberate conduct by appellants to oppress or insult respondents that increased their mental pain and suffering — Whether High Court judge wrong in awarding exemplary or aggravated damages

Norullah bt Zawawi ('the first respondent'), who had attained celebrity status after emerging as a finalist in a talent contest, and Mohd Munzil bin Muhamad ('the second respondent'), a law lecturer in a local university, were married in 2011. After all the preparatory arrangements for their wedding ceremonies, including purchasing flight tickets, chartering accommodations and transports for the groom's relatives had been undertaken, the first respondent, who was adopted, found out that her biological father refused to participate in the *wali mujbir* (*wali* by way of blood relation) arrangement. As a result, the respondents' marriage was solemnised at the Islamic Council in Thailand by way of *wali hakim.* The respondents' claimed that a television programme entitled Melodi ('the programme'), which was a lighthearted infotainment programme focusing on local celebrities in the entertainment scene, had allegedly published defamatory words, which questioned the validity of the respondents' marriage. The first to fourth appellants were at all material times the operator of the television channel that aired the programme, the television journalist or producers and the operator of the website on which the programme could be viewed, while the fifth defendant was one of the biological brothers of the first respondent. The respondents filed an action in defamation against the appellants for questioning the validity of their marriage and publishing private issues between the first respondent and her biological family. It was the respondents' case that the programme had published words that had the effect of materially injuring the respondents in that they firstly suggested that the respondents' marriage without a *wali* was void, the respondents' were living in adultery and sin, and that their infant child was illegitimate; and

secondly implied that the first respondent was a liar, a scoundrel and insolent daughter to her parents. The appellants pleaded the defences of justification and qualified privilege. The High Court judge found in favour of the respondents and ordered the appellants to pay the respondents a sum of RM250,000 as damages with interest. This was the appellants' appeal against that decision on the grounds that they were only discharging their public duty by providing media coverage relating to the family conflict that had existed between the parties, with the intention of interceding in the conflict. The appellants submitted that they had acted in good faith by attempting to mend the conflict in the first respondent's family but the respondents' had instead sued them for defamation. The appellants further submitted that the damages awarded were manifestly excessive and there was no basis for any aggravated or exemplary damages to be awarded.

Held, dismissing the appeals on liability but setting aside the award of damages and substituting it with an award of RM80,000 with no order as to costs:

(1) On the issue of liability, the High Court judge as a primary trier of fact had adopted the correct approach before deciding that the words in question were defamatory of the respondents and that the appellants had failed in their defences of justification and qualified privilege. The findings of the High Court judge were clearly justified based on oral and contemporaneous evidence led during the trial. As such, the decision of the High Court was affirmed on the issue of liability (see para 25).

(2) On the issue of damages, the general rule was that the law assessed damages on a purely compensatory basis. The amount of damages awarded would be governed by all the circumstances of the particular case, including the standing of the respondents, the nature of the libel and the whole conduct of the appellants from the time the libel was published to the moment of its decision. It was settled law that exemplary damages could only be awarded if one of three categories applied. Clearly in the present case there was absolutely no basis for any exemplary damages, which were punitive in nature, to be even considered under any one of those three categories propounded by case law. On the contrary, the first to fourth appellants had published the programme in response to calls for help from the first respondent's biological family members and there was no suggestion that the programme was a scheme calculated to make profit for the appellants (see paras 30–32).

(3) Aggravated damages could be awarded within the compensatory principles if there had been any kind of high-handedness, oppression or contumelious behavior by the appellants which increased the respondents' mental pain and suffering. In the present case the appellants broadcast the news in question without malice to disseminate information of a public interest and there was no evidence that there was

any deliberate conduct on the part of the appellants to oppress or insult the respondents and which increased the mental pain and suffering of the respondents. Any claim for aggravated damages should therefore be rejected to be plainly without basis (see paras 33–36).

(4) The High Court judge was therefore wrong in awarding exemplary or aggravated damages in the present case. In consequence, after having considered the respondents' position and standing as well as the nature of the defamation, which arose out of an unhappy case of family conflict, a sum of RM80,000 by way of compensatory damages for both the respondents was fair and reasonable to compensate them for the pain and suffering they had endured. Thus the sum of RM250,000 awarded by the High Court judge was set aside and substituted with an award in the sum of RM80,000 (see paras 36–38).

[Bahasa Malaysia summary

Norullah bt Zawawi ('responden pertama'), yang mendapat status selebriti selepas muncul sebagai peserta akhir dalam pertandingan bakat, dan Mohd Munzil bin Muhammad ('responden kedua'), pensyarah undang-undang di universiti tempatan, telah berkahwin pada tahun 2011. Selepas semua aturan persediaan untuk majlis perkahwinan mereka, termasuk pembelian tiket penerbangan, penyewaan penginapan dan pengangkutan untuk keluarga pengantin lelaki telah dibuat, responden pertama, yang merupakan anak angkat, mendapati bahawa bapa kandungnya enggan untuk menjadi wali *mujbir* (wali melalui pertalian darah). Akibatnya, perkahwinan responden diijabkabulkan di Majlis Agama Islam di Thailand melalui wali hakim. Responden mendakwa bahawa rancangan televisyen bertajuk Melodi (rancangan), yang merupakan rancangan ringan yang memfokuskan selebriti tempatan dalam dunia hiburan, telah didakwa mengeluarkan perkataan fitnah, yang mempersoalkan kesahihan perkahwinan responden. Perayu pertama sehingg perayu keempat adalah pada setiap masa pengendali saluran televisyen yang menyiarkan program itu, wartawan televisyen atau penerbit dan operator laman web di mana program ini boleh ditonton, manakala perayu kelima adalah salah seorang daripada saudara kandung responden pertama. Responden memfailkan tindakan fitnah terhadap perayu-perayu kerana mempersoalkan kesahihan perkahwinan mereka dan penerbitan isu-isu peribadi antara responden pertama dan keluarga kandungnya. Ia adalah kes responden bahawa program ini telah menerbitkan kata-kata yang mempunyai kesan secara material mencederakan responden di mana mereka, pertama mencadangkan bahawa perkahwinan responden tanpa wali adalah tidak sah, responden telah hidup dalam perzinaan dan dosa, dan bahawa bayi mereka adalah anak luar nikah; dan kedua secara tersirat bahawa responden pertama adalah seorang pendusta, bangsat dan anak perempuan yang derhaka kepada ibu bapanya. Perayu memplidkan pembelaan justifikasi dan perlindungan bersyarat. Hakim Mahkamah Tinggi membuat dapatan memihak kepada

responden dan memerintahkan perayu membayar responden sebanyak RM250,000 sebagai ganti rugi berserta faedah. Ini adalah rayuan perayu terhadap keputusan itu atas alasan bahawa mereka hanya menjalankan tugas awam mereka dengan menyediakan liputan media yang berkaitan dengan konflik keluarga yang telah wujud antara pihak-pihak, dengan tujuan untuk menjadi pengantara dalam konflik itu. Perayu berhujah bahawa mereka telah bertindak dengan suci hati dengan cuba untuk memperbaiki konflik keluarga responden pertama, tetapi responden telah sebaliknya menyaman mereka untuk fitnah. Perayu selanjutnya berhujah bahawa ganti rugi yang diawardkan adalah jelas berlebihan dan tidak ada asas bagi apa-apa ganti rugi teruk atau teladan yang diawardkan.

Diputuskan, menolak rayuan mengenai liabiliti tetapi mengetepikan award ganti rugi dan menggantikan dengan award RM80,000 tanpa perintah mengenai kos:

(1) Mengenai isu liabiliti, hakim Mahkamah Tinggi sebagai pembicara utama sebenarnya telah menerima pakai pendekatan yang betul sebelum memutuskan bahawa perkataan-perkataan yang dipersoalkan berunsur fitnah terhadap responden dan bahawa perayu-perayu telah gagal dalam pertahanan mereka justifikasi dan perlindungan bersyarat. Dapatan hakim Mahkamah Tinggi telah jelas berjustifikasi berdasarkan keterangan lisan dan terkini yang di kemukakan semasa perbicaraan. Oleh itu, keputusan Mahkamah Tinggi telah mengesahkan mengenai isu liabiliti (lihat perenggan 25).

(2) Mengenai isu ganti rugi, peraturan umum adalah bahawa undang-undang menilai ganti rugi semata-mata atas dasar pampasan. Jumlah ganti rugi yang diawardkan akan ditadbir oleh segala hal keadaan tertentu, termasuk taraf responden, sifat fitnah dan seluruh kelakuan perayu dari masa libel itu disiarkan hingga saat keputusannya. Ia telah undang-undang tetap bahawa ganti rugi teladan hanya boleh diberikan jika salah satu daripada tiga kategori yang digunakan. Jelas sekali dalam kes ini tidak terdapat sama sekali asas untuk mana-mana ganti rugi teladan, yang bersifat menghukum, untuk dipertimbangkan di bawah mana-mana satu daripada tiga kategori yang dikemukakan oleh kes undang-undang. Sebaliknya, perayu pertama hingga keempat telah menerbitkan program ini sebagai tindak balas kepada panggilan bantuan daripada ahli-ahli keluarga biologi responden pertama dan tidak ada cadangan bahawa program itu adalah satu skim yang dikira untuk membuat keuntungan bagi perayu (lihat perenggan 30–32).

(3) Ganti rugi teruk boleh diawardkan dalam prinsip pampasan sekiranya ada apa-apa jenis desakan, penindasan atau tingkah laku yg bersifat celaan oleh perayu yang menambahkan kesakitan mental dan penderitaan responden. Dalam kes ini perayu menyiarkan berita

berkenaan tanpa niat jahat untuk menyebarkan maklumat untuk kepentingan awam dan tidak ada bukti bahawa ada apa-apa kelakuan yang sengaja di pihak perayu untuk menindas atau menghina responden dan yang mana meningkatkan kesakitan mental dan penderitaan responden. Apa-apa tuntutan bagi ganti rugi teruk oleh itu patut ditolak kerana jelas tidak berasas (lihat perenggan 33–36).

(4) Hakim Mahkamah Tinggi oleh itu adalah salah dalam mengawardkan ganti rugi telandan atau teruk dalam kes ini. Akibat daripada itu, setelah mempertimbangkan kedudukan dan taraf responden juga sifat fitnah, yang timbul daripada kes konflik keluarga tidak bahagia, satu jumlah sebanyak RM80,000 melalui cara ganti rugi pampasan untuk kedua-dua responden adalah adil dan munasabah untuk memampasi mereka untuk kesakitan dan penderitaan yang telah mereka alami. Maka jumlah sebanyak RM250,000 yang diawardkan oleh hakim Mahkamah Tinggi diketepikan dan diganti dengan award sebanyak RM80,000 (lihat perenggan 36–38).]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (5th Ed, 2015) paras 575–793.

Cases referred to

Cheong Chark v Gammon (Malaya) Ltd [1939] 1 MLJ 65 (refd)
Datuk Patinggi Abdul Rahman Ya'Kub v Abang Mohammad bin Abang Anding [1979] 2 MLJ 185 (refd)
McCarey v Associated Newspapers Ltd (No 2) [1964] 3 All ER 947, CA (refd)
Rookes v Barnard [1964] AC 1129, HL (refd)
Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 (refd)

Appeal from: Civil Suit No 23NCVC-84-09 of 2011 (High Court, Kuala Lumpur).

Liew Teck Huat (Lim Qi Si with him) (TH Liew & Partners) for the appellants.
Nadzarin bin Wok Nordin (Suzalena bt Salleh and Shazryll Aizad bin Ahmad Khairy with him) (Nadzarin Kuok Puthucheary & Tan) for the respondents.

Azahar Mohamed JCA (delivering judgment of the court):

[1] In the High Court, the two respondents sued the five appellants for defamation in relation to a television programme entitled 'Melodi' ('the Melodi programme') of materials, which the respondents alleged questioned the respondents' marriage in Thailand.

[2] We shall be referring to parties in this judgment in their respective capacity in the High Court.

[3] The plaintiffs' case was that the said Melodi programme, whether viewed in totality or otherwise, had published defamatory words, which questioned the validity of the plaintiffs' marriage, and had published the private issues between the plaintiffs and the first plaintiff's biological family.

[4] The High Court had, after a full trial, allowed the plaintiffs' claim and ordered the defendants to pay RM250,000 as damages with interest and costs fixed at RM70,000.

[5] Aggrieved by the whole decision of the High Court, all the defendants filed an appeal to this court. We heard the appeal. At the conclusion of the hearing of the appeals, by unanimous decision, we decided:

(a) the appeals by the defendants on liability are dismissed;

(b) the award of damages made by the High Court in the sum of RM250,000 be set aside and substituted with an award in the sum of RM80,000;

(c) there is no order as to costs of the appeal;

(d) the order as to costs made by the High Court in the sum of RM70,000 to stand; and

(e) the deposit to be refunded to the defendants.

[6] Following our decision, the plaintiffs' had filed an application for leave to appeal to the Federal Court on issue of damages.

[7] We now give our reasons for setting aside the award of damages made by the High Court in the sum of RM250,000 and substituting it with an award in the sum of RM80,000.

[8] The facts of the case are well set out in the judgment of the learned High Court judge. Very briefly the background facts giving rise to the appeal are as follows.

[9] The plaintiffs are a married couple. In 2004, the first plaintiff was a contestant in the ASTRO organised talent contest 'Akademi Fantasia Musim Ke-2' ('AF2') and she successfully advanced to the final rounds. From 2004 onwards and subsequent to the AF2 show, the first plaintiff's career as a singer and entertainer blossomed. She achieved something of a celebrity status.

[10] The second plaintiff is a law lecturer in a local university. Prior to his

career as a lecturer, he was a deputy public prosecutor at the Attorney General's Chambers, Malaysia.

[11] The first plaintiff was born to the couple, Encik Zawawi and Puan Dara in Kuching, Sarawak. The first plaintiff was given away by her biological family for adoption to a childless couple when she was still an infant. Shortly after the first plaintiff was given away for adoption, her biological and adoptive families were involved in a family dispute and were intensely hostile towards each other ever since. Due to the family dispute, she was never introduced to her biological family.

[12] The first plaintiff met the second plaintiff in 2010 and they later got engaged in February 2011. It was during the engagement that the bride's wedding ceremony was fixed on 28 May 2011 and 29 May 2011 and the groom's side a week later on 3 June 2011 ('the wedding ceremonies').

[13] After the engagement, her adopted mother had assured the first plaintiff that she would assist her to approach her biological father in regard to her *wali mujbir* (*wali* by way of blood relation) arrangement. As events turned out, the first plaintiff's biological father refused to be her *wali*. As a result of which on 23 April 2011, the plaintiffs' marriage was solemnised at the Islamic Council of Narathiwat Province, Thailand by way of *wali hakim*.

[14] It was the plaintiffs' case that the solemnisation had to be done in order to save the wedding ceremonies as all the preparation had been undertaken, including purchasing air-flight tickets, chartering accommodations and transports for the groom's family/relatives. On 26 May 2011, Mahkamah Syariah Hulu Langat issued a court order declaring that the plaintiffs' marriage is valid according to *Hukum Syara*'.

[15] The first defendant is a company operating a leading free-to-air television channel in Malaysia (also known as TV3). The second defendant is one of the first defendant's producers. The third defendant is one of the first defendant's television journalists/producers. The fourth defendant is a company operating the website www.tonton.com.my on which the Melodi programme can be viewed. The fifth defendant is one of the biological brothers of the first plaintiff.

[16] Amongst the many popular programmes aired regularly over the first defendant's television channel is one entitled 'Melodi'. 'Melodi' is a lighthearted infotainment programme focusing largely on the local entertainment scene. 'Melodi' also features at times, a segment dedicated to public complaints, especially involving celebrities in the spotlight.

[17] The Melodi programme which was aired on 26 June 2011 contained a segment on the family dispute between the first plaintiff and her biological family. It also contained materials consisting of statements and visuals regarding the plaintiffs' marriage in Thailand. It was also shown live on the same day at the Jom Heboh Carnival at Stadium Likas, Sabah, the venue where the Melodi programme was recorded. On 6 July 2011, the Melodi programme was aired again on or about 12.30pm to 1.30pm. On 9 July 2011, the Melodi programme was also uploaded to the internet portal of www.tonton.com.my and thus was accessible online anytime and anywhere by anyone in the world.

[18] The Melodi programme was in the form of an infotainment report touching on the first plaintiff's marriage in Thailand where it was alleged that the first plaintiff's biological father had refused to be her 'wali' although she tried to persuade him to do so.

[19] The Melodi programme had amongst others, published the following words:

> Ha, tolong bertaubat katanya ...
>
> Taubat, taubat cepat-cepat ...
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> (English translation:
>
> Ha, Please repent he said ...
>
> Repent ... repent quickly ...)
>
> Nikah di Thailand memang sah di atas kertas sahaja, tapi di dalam agama, selagi orang tua masih hidup, nikah di Thailand dia tak sah.
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> (English translation:
>
> Solemnisation in Thailand is only valid on paper, but according to religion, as long as your parents is still alive, their marriage solemnisation in Thailand was not valid).

[20] According to the plaintiffs', the words have the effect of casting a slur on the plaintiffs' character and reputation, and were therefore defamatory of the plaintiffs. It was the plaintiffs' case that that there were two stings in this case, which materially injured the plaintiffs.

[21] The first sting, is that the plaintiffs were alleged to be married without a *wali*, carried the meaning that the plaintiffs' marriage is void, and the plaintiffs are living in adultery and sin all this while. The plaintiffs' offspring, and in this instance their infant child, Nasuha, would carry the taboo of illegitimacy all her life.

[22] The second sting, that the first plaintiff had made statements that she had met her biological father and that he refused to be her wali, would result in

the first plaintiff being called a liar, a scoundrel and an insolent daughter to her parents.

[23] The learned High Court judge found in favour of the plaintiffs. It is undisputed that the first and second plaintiffs were married in Thailand and subsequently their marriage was registered in Hulu Langat's Syariah Court. The learned High Court judge found that the issue of *wali* was a matter of *Hukum Syara'* for Muslims. Violation of that *Hukum Syara'* would carry a reprehensible consequence, as the issue of adultery, fornication and the status of legitimacy of the children out of the relationship would arise. The learned High Court judge found that the defendants' case was placed on the wrong footing that the nikah ceremony in Thailand did not require a *wali* for a Muslim marriage.

[24] The learned High Court judge found that the third defendant, during the airing of the Melodi programme on 26 June 2011 had full knowledge that the plaintiffs' wedding was declared valid by Mahkamah Syariah Hulu Langat on 26 May 2011 but decided not to reveal this crucial fact in the Melodi programme.

[25] On the issue of liability, as a primary trier of fact, the learned High Court judge, as disclosed in her judgment, had carefully scrutinised, weighed all the evidence and adopted the correct approach before deciding that the words in question were defamatory of the plaintiffs and that the defendants had failed in their defences of justification and qualified privilege. In our judgment, on the issue of liability the findings of the learned High Court judge were clearly justified based on oral and contemporaneous evidence led during the trial. It has not been successfully shown to us that the findings of the learned High Court judge on liability was against the weight of evidence or perverse in any way. We had therefore affirmed the decision of the learned High Court judge on the issue of liability.

[26] When it came to the issue of award of damages, the judgment of the learned High Court judge, with respect, ran into difficulties. As we have said earlier, the learned High Court judge ordered the defendants to pay the plaintiffs a sum of RM250,000 as damages with interest. The reasons for awarding the said sum can be seen in the following passage of her judgment, with the necessary emphasis:

> Ganti rugi
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> 70. Dalam menentukan ganti rugi, saya mengambil kira keputusan dalam kes *Harry Issacs & Ors v Berita Harian Sdn Bhd & Ors* [2012] 4 MLJ 191 *kes Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat* [2012] 2 MLJ 807*, kes Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 3 MLJ 322*, kes Syed Husin Ali v Sharikat*

Perchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 *dan kes Rookes v Barnard* [1964] AC 1129.

71. Saya telah pun mengupas dengan mendalam semua insiden yang berlaku dalam kes ini dan berasaskan semua itu, saya menyatakan persetujuan saya sepenuhnya dengan hujahan peguam cara plaintif yang bijaksana mengenai alasan dan asas yang sepatutnya diambil kira dalam mempertimbangkan ganti rugi dan kuantumnya. *Saya membenarkan tuntutan kedua-dua plaintif bagi ganti rugi, ganti rugi keterlaluan dan ganti rugi teladan. Saya membenarkan amaun secara global bagi ketiga-tiganya sebanyak RM250,000.* Saya juga membenarkan tuntutan plaintif di perenggan c, faedah atas amaun penghakiman sebanyak 5% dari tarikh penghakiman ke tarikh penyelesaian dan kos sebanyak RM70,000.

[27] As can be seen, the High Court's award of RM250,000 includes aggravated and exemplary damages.

[28] Before us, learned counsel for the defendants submitted that the damages awarded at RM250,000 were manifestly excessive; there was absolutely no basis for any aggravated or exemplary damages to be awarded. Learned counsel urged us to consider that the dispute in this unfortunate case concerned a family conflict. He added that the first to fourth defendants (collectively forming the media) were caught in the conflict when they sought to discharge their public duties by providing media coverage relating to this unfortunate case. Their coverage of this case was to intercede in the conflict. He added that it was a genuine good faith attempt to mend the family but the plaintiffs instead sued them for defamation. In the circumstances, according to learned counsel, if at all, the plaintiffs were only entitled to compensatory damages to appease the plaintiffs' injured feelings, and no aggravated or exemplary damages.

[29] In asserting their position that the award of RM250,000 was fair and reasonable, learned counsel for the plaintiffs argued that the reckless act of the defendants in defaming the plaintiffs had caused embarrassment, pain and irreparable damage to the plaintiffs. The insinuation of adultery and illegitimacy of their children will now haunt the plaintiffs for the rest of their lives. Therefore, learned counsel argued that it was clear that the learned High Court judge had arrived at her decision on the award correctly on the basis of relevant laws and the established evidence.

[30] In the present case, the principal remedy sought by the plaintiffs was for an award of damages. Since libel had been established, as a matter of general rule, the law presumed some damage will result in the ordinary course when a defendant invades another's absolute right to reputation (see *Cheong Chark v Gammon (Malaya) Ltd* [1939] 1 MLJ 65). The general rule is that the law assesses damage on a purely compensatory basis. This will include any resultant

social disadvantage, and compensation for the natural grief and distress, which the plaintiff might feel as a result of the statement having been published (see *Datuk Patinggi Abdul Rahman Ya'Kub v Abang Mohammad bin Abang Anding* [1979] 2 MLJ 185). The damages awarded operate both as a vindication of the plaintiff to the public and as a consolation to him for the wrong done (see *Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56). The amount of damages will be governed by all the circumstances of the particular case, including the position and standing of the plaintiff, the nature of the libel and the whole conduct of the defendant from the time when the libel was published to very moment of its decision (see *Gatley on Libel and Slander*, (8th Ed) at pp 592–593).

[31] The most important authority for the award of exemplary damages is the House of Lords decision in *Rookes v Barnard* [1964] AC 1129. This decision recognised three broad categories where exemplary damages may be awarded. The first category is of those cases; where the plaintiff is injured by the oppressive, arbitrary or unconstitutional action by the executive or the servant of the government. The second category is comprised of those cases in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. The third category is where a statute has expressly authorised it.

[32] Clearly, in the present case there is absolutely no basis for any exemplary damages, which is punitive in nature, to be even considered under any of the three categories as propounded by *Rookes v Barnard*. On the contrary, the first to fourth defendants published the Melodi programme in response to the calls for help by the biological family members. The matter extended beyond just responding to the call for help. It was a programme designed to heal broken family relationships. There was no suggestion that the programme was a scheme calculated to make profits for the defendants.

[33] In most defamation cases, aggravated damages are often claimed together with exemplary damages. But then it is not the same and must be differentiated from the punitive purpose of exemplary damages; in that aggravated damages is still compensatory in nature. Aggravated damages may be awarded within the compensatory principles if there has been any kind of high-handed, oppressive, insulting or contumelious behavior by the defendant which increases the mental pain and suffering, which is caused by the defamation and which may constitute injury to the plaintiff's pride and self-confidence (see *McCarey v Associated Newspapers Ltd (No 2)* [1964] 3 All ER 947).

[34] In the present case, there was no evidence that the defendants acted in any high-handed, oppressive, insulting or contumelious manner. The

defendants broadcast the news in question without malice to disseminate information of a public interest. In particular, the first to fourth defendants were trying to intercede in this sad and regrettable family dispute to repair the cracks between the families.

[35] There was no evidence at all that there was any deliberate conduct on the part of the defendants to oppress or insult the plaintiffs. Any claim for aggravated damages must therefore be rejected to be plainly without basis.

[36] For all the reasons stated we held that there had not been established circumstances in the present case justifying either exemplary or aggravated damages, which the learned High Court judge awarded in this case. The learned High Court judge, with respect, was plainly wrong in awarding exemplary and aggravated damages. On the evidence of the present case, we found no evidence of any kind of high-handed, oppressive, insulting or contumelious behavior by the defendants which increased the mental pain and suffering of the plaintiffs. There was no basis to award exemplary and aggravated damages but the award of RM250,000 included such damages, which was plainly wrong.

[37] In consequence, this case was one for compensation in respect of the injury to the plaintiffs' reputation and honour. In the circumstances of this case, having considered the plaintiffs' position and standing as well as the nature of the defamation, which arose out of an unhappy case of family conflict, we held that a sum of RM80,000 by way of compensatory damages for both the plaintiffs was fair and reasonable to compensate them for the pain and suffering they had endured.

[38] We had therefore allowed the defendants' appeal only to this extent. The award of damages made by the High Court in the sum of RM250,000 was set aside and substituted with an award in the sum of RM80,000.

Appeals on liability dismissed, award of damages set aside and substituted with an award of RM80,000 with no order as to costs.

Reported by Kohila Nesan